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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 440

THE UNITED STATES OF AMERICA, PETITIONER

vs.

GILBERT ASSOCIATES, INC.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW HAMPSHIRE

PETITION FOR CERTIORARI FILED NOVEMBER 7, 1952

CERTIORARI GRANTED JANUARY 5, 1953

SUPREME COURT OF THE UNITED STATES

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No.

THE UNITED STATES OF AMERICA, PETITIONER,

vs.

GILBERT ASSOCIATES, INC.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW HAMPSHIRE

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THE STATE OF NEW HAMPSHIRE, CHESHIRE, SS., SUPERIOR COURT

FEBRUARY TERM, 1951

No. 4325

Gilbert Associates, Inc., In Receivership

RESERVED CASE

Petition for appointment of a Receiver for Gilbert Associates, Inc. A temporary Receiver was apppointed on August 12, 1949, and a permanent Receiver was appointed on January 30, 1950.

The corporation operated an electroplating plant in Walpole. The property of the corporation was sold at auction, and after the payment of expenses of administration and fees, a balance was left in the hands of the Receiver in the sum of $2,642.91. To this sum, both the United States of America and the Town of Walpole lay claim by virtue of taxes assessed against the corporation.

The claim of the United States is for various employment, withholding and corporate income taxes for various periods between 1943 and June 30, 1948, and is based on 26 U. S. C. 3670; 3671, 3672 (a) (2). The United States of America also claims priority by virtue of 31 U. S. C. 191, giving general priority to debts due the United States in all insolvency cases. A notice of Federal tax lien was filed in the United States District Court for the District of New Hampshire on August 6, 1948, with respect to most of the items claimed.

The Town of Walpole bases its claim on local property taxes assessed on the corporation machinery by virtue of R. L., c. 73, s. 8, for the years 1947, 1948 and 1949, in the amount of $1,977.68, and claims as a priority of Receivership property taxes for the year 1950, in the amount of $421.00. The Town of Walpole claims that the said taxes were assessed on April 1, 1947, 1948, 1949 and 1950. The Gilbert Associates, Inc.'s electroplating plant was advertised for 1947 Walpole property taxes on August 24, 1948, for 1948 taxes on August 23, 1949 and on September 24, 1949, and for 1949 taxes on August 23, 1950. The property was sold for 1947 taxes on September 25, 1948, for 1948 taxes on September 24, 1949, and for 1949 taxes on September 25, 1950.

The Court found and ruled: (1) that the taxes assessed by the Town of Walpole on April 1, 1947 and April 1, 1948, in the total amount of $1,303.80, created specific and perfected liens which are prior to, and superior to, the claims of the United States; (2) that the tax claims of the United States are superior to the claims of the Town of Walpole for taxes assessed in 1949 and 1950; (3) that

the expenses of the Receivership do not include the taxes assessed by the Town of Walpole on April 1, 1950.

The United States of America seasonably excepted to the Court's finding and ruling that the taxes assessed by the Town of Walpole on April 1, 1947 and April 1, 1948 created specific and perfected liens and are prior to the claims of the United States. The United States of America seasonably moved that that part of the Court's decree finding and ruling a priority in favor of the Town of Walpole for 1947 and 1948 taxes be set aside. The United States of America seasonably moved that the Court find and rule that the claims of the United States for taxes amounting to $4,035.34 have priority over the claims of the Town of Walpole and that the United States is entitled to the full balance of the money in the hands of the Receiver. These motions were denied subject to the exceptions of the United States of America.

All questions of law raised thereby are reserved and transferred.

Exhibits, including the proof of claim of the United States for taxes, may be used but need not be printed.

Reserved and transferred.

HAROLD E. WESCOTT,
Presiding Justice.

Sept. 1, 1951.

APPENDIX

IN THE SUPERIOR COURT

Equity #4325

In re: Gilbert Associates, Inc. in Receivership

BILL OF EXCEPTIONS OF TOWN OF WALPOLE

Now comes the Town of Walpole in the above entitled matter and excepts to the findings of fact, rulings of law and decree as filed by the Honorable Harold E. Wescott, Presiding Justice in the above entitled action, under date of August 22, 1951, as follows:

The Town of Walpole excepts to the ruling that the tax claims of the United States are superior to the claims of the Town of Walpole for taxes assessed in 1949 and 1950 and to the ruling that expenses of Receivership do not include the taxes assessed by the Town of Walpole on April 1, 1950. As grounds for said exceptions the Town of Walpole claims that the above mentioned rulings of law set forth in said decree are erroneous in that they are contrary to the law in such cases made and provided.

The findings of fact, rulings of law, the decree, and the briefs of the Town of Walpole and the United States, are incorporated herein and made a part hereof by reference.

And now that right and justice may be done, the Town of Walpole tenders this, its bill of exceptions, and prays that the same may be approved and allowed.

Town of Walpole,
By PHILIP H. FAULKNER,
GEORGE R. HANNA.

Approved and allowed.
HAROLD E. WESCOTT.

IN THE SUPERIOR COURT OF NEW HAMPSHIRE

Gilbert Associates, Inc.

In Receivership

No. 4325

DECREE: RE: TAX CLAIMS—August 22, 1951

Temporary Receivers for Gilbert Associates, Inc. were appointed August 12, 1949, and a permanent Receiver was appointed January 30, 1950. For several years prior thereto the corporation operated an electroplating plant in Walpole, New Hampshire.

The Town of Walpole seeks priority in the balance of the funds in the hands of the Receiver for taxes assessed on the corporation machinery by virtue of R. L. c. 73, s. 8. These taxes were assessed on April 1 of 1947, 1948, 1949, and 1950, and created a lien against the property under R. L. c. 80, s. 17. The property was sold for the 1947 taxes on September 25, 1948, and for the 1948 taxes on September 24, 1949.

The United States seeks priority in the funds because of employment, withholding and corporate income taxes for various periods between 1943 and June 30, 1948. The Government's claim is based on 26 U. S. C. 3670, 3671, 3672 (a) (2). A notice of federal tax lien was filed in the United States District Court Clerk's office for the District of New Hampshire, on August 6, 1948.

The Court finds and rules that the taxes assessed by the Town of Walpole on April 1, 1947 and April 1, 1948, in the total amount of $1,303.80, created specific and perfected liens which are prior to, and superior to, the claims of the United States. The tax claims of the United States are found to be superior to the claims of the town for taxes assessed in 1949 and 1950. Expenses of the Receivership do not include the taxes assessed by the town of Walpole on April 1, 1950.

HAROLD E. WESCOTT,
Presiding Justice.

August 22, 1951.

October Term, 1952

No. 440

The United States of America, petitioner

vs.

Gilbert Associates, Inc.

Order allowing certiorari

Filed January 5, 1953

The petition herein for a writ of certiorari to the Supreme Court of the State of New Hampshire is granted and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.